

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administrative Office	(2) MEETING DATE 7/26/2016	(3) CONTACT/PHONE Guy Savage/781-5011	
(4) SUBJECT Submittal of a report and solicitation of Board direction related to Medical Cannabis (Marijuana), including authorization of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Receive an update related to Medical Cannabis (Marijuana) regulation; 2. Provide direction to staff; and, 3. Authorize the processing of amendments to the Land Use Ordinance (Titles 22 and 23 of the County Code), the Local Coastal Plan, and the General Plan, as necessary, to create one or more Ordinances related to Marijuana within the unincorporated areas of San Luis Obispo County. 			
(6) FUNDING SOURCE(S)	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>12/15/2015, 2/9/2016, 3/22/2016</u>	
(17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Administrative Office / Guy Savage / 781-5011

DATE: 7/26/2016

SUBJECT: Submittal of a report and solicitation of Board direction related to Medical Cannabis (Marijuana), including authorization of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Receive an update related to Medical Cannabis (Marijuana) regulation;
2. Provide direction to staff; and,
3. Authorize the processing of amendments to the Land Use Ordinance (Titles 22 and 23 of the County Code), the Local Coastal Plan, and the General Plan, as necessary, to create one or more Ordinances related to Marijuana within the unincorporated areas of San Luis Obispo County.

DISCUSSION

On three separate occasions, staff has provided information and sought Board of Supervisors direction related Medical Cannabis (Marijuana). At the March 22, 2016 meeting, your Board provided staff with broad direction to pursue the development of a permanent County ordinance. Since that time, staff has spent time mapping the various State of California legislation and their associated license types against existing County Land Use Ordinance, talking to interested parties within the local Marijuana community, tracking and exploring rapidly changing regulations for surrounding cities and counties, and developing a list of key policy areas where direction is needed in order to form or modify County ordinances and amendments.

Authority

Your Board is considering this proposal today because unlike the processing of land use permits, the first step when considering requested changes to the general plan or land use ordinances is for your Board to determine whether to initiate new legislation to change the rules. If you authorize this request for processing, the proposed amendments will be scheduled for public hearings before the Planning Commission and your Board after applicable environmental review process and staff reports are completed.

Marijuana Policy Direction and Ordinance Considerations

As specified in the Medical Marijuana Regulation and Safety Act (MMRSA), which is comprised of AB 243, AB 266, and SB 643 (attachments 1, 2, and 3, respectively), no commercial Marijuana activity is permitted without both a State of California license and a license, permit, or other authorization from their local government. Further, AB 266 allows that actions by licensees that are permitted by both a State license and a local government are lawful, and the licensee is protected from arrest, prosecution, or other legal sanctions. While licenses do provide protection for licensees for the permitted business, Marijuana

licenses do not allow licensees to ignore or violate other Federal or State laws, or County Ordinance, such as requirements for building or use permits

Staff relied heavily upon Monterey County ordinance provisions (attachment 4) in the development of considerations for a local County ordinance. Policy issues identified through the review of surrounding jurisdictions' ordinances, plus documentation and input provided by local growers and the agricultural community are included in the discussion that follows. Each of the paragraphs outlines one or more areas where specific policy direction is needed to draft proposed changes to County ordinance(s) regarding Marijuana.

MMRSA Designated License Types

Table 1 summarizes the license types designated by the MMRSA. Attachment 5 provides a summary of the primary license types and subtypes outlined in the MMRSA mapped against existing County Land Use Ordinance.

Table 1 – MMRSA and AUMA License Types

Cultivation			
License	Category / Name	Size (Total Canopy)	Lighting
Type 1	Specialty – Outdoor	<5,000 sf or <50 plants	Natural
Type 1a	Specialty – Indoor	<5,000 sf or <50 plants	Artificial
Type 1b	Specialty – Mixed	<5,000 sf or <50 plants	Natural & Artificial
Type 2	Small – Outdoor	5,001 sf – 10,000 sf	Natural
Type 2a	Small – Indoor	5,001 sf – 10,000 sf	Artificial
Type 2b	Small – Mixed	5,001 sf – 10,000 sf	Natural & Artificial
Type 3	Medium – Outdoor	10,001 sf – 1 acre outdoor	Natural
Type 3a	Medium – Indoor	10,001 sf – 22,000 sf indoor	Artificial
Type 3b	Medium – Mixed	10,001 sf – 22,000 sf indoor	Natural & Artificial
Type 4	Nursery	N/A	N/A
Type 5*	Large – Outdoor	>1 acre outdoor	Natural
Type 5a*	Large – Indoor	>22,001 sf indoor	Artificial
Type 5b*	Large – Mixed	>22,001 sf indoor	Natural & Artificial
Processing			
License	Category		
Type 6	Manufacturing – Non-volatile / no solvents		
Type 7	Manufacturing – Volatile solvents		
Type 8	Laboratory - Testing		
Distribution and Retail			
License	Category		
Type 10	Dispensary – General		
Type 10a	Dispensary – No more than three retail sites (satellite)		
Type 11	Distributor		
Type 12	Transporter		

*AUMA license type

Title 22 (Inland Areas) and Title 23 (Coastal Areas)

While much of the conversation regarding Marijuana is equally applicable to Inland and Coastal Areas of the County, at this point in time, some considerations may differ between the two areas. Amendments to Title 23 generally need to be certified by the Coastal Commission and it is unknown whether such amendments would be supported. However, your Board may wish to address Marijuana as a whole for the entire County, in which case staff would recommend authorizing amendments to Title 23 as well as Title 22 at this time, with direction on whether the Coastal and Inland Areas should be treated differently in any respect.

Crop Designation

There appears to be widespread recognition in the agricultural community that Marijuana is a special crop and that regulating it in a unique manner makes sense. Regardless, some have raised concerns that special regulations on Marijuana could open the door to creating unique or special regulations on additional crops. After considering these concerns and speaking to many members of the agricultural community, staff is recommending that Marijuana be defined and treated as a "Specialty Crop." This designation will allow the crafting of specific regulations regarding the cultivation, processing, distribution, and sale of Marijuana.

Cultivation and Cultivation Limits

Setting limits on cultivation is a multifaceted issue. The State of California Department of Public Health (DPH), who is required to administer the provisions of the MMRSA at the State level, has been directed to limit the number of medium sized cultivation licenses (types 3, 3a, and 3b). Large size cultivation licenses (types 5, 5a, and 5b) will become effective if the Adult Use of Marijuana Act (AUMA) passes in November 2016. However, if the AUMA initiative (attachment 6) is passed, DPH has been directed to delay issuing large size cultivation licenses until January 2023. Apart from outright bans, these two approaches, limiting the total number of licenses (permits) issued or delaying issuance of licenses are two of the approaches being adopted by other California jurisdictions. Prior Board direction included statements that the County position itself "in the middle" of surrounding jurisdictions. Consequently, staff recommends overall limits on the total number of cultivation licenses (permits) issued, additional limits on the number of medium sized cultivation licenses permitted, and a ban on large size cultivation licenses be included in any proposed County ordinance. Following the approach of Monterey County ordinances, staff recommends that a maximum of one hundred (100) licensed Marijuana cultivations be permitted in the unincorporated areas of the County. Again following the example of Monterey County, staff recommends that the Board of Supervisors consider amending this limitation within two (2) years of adoption of any proposed County ordinance, or by the end of 2018, whichever occurs first.

MMRSA identified cultivation license types for specialty, small, medium, and large cultivation are subdivided into three approaches to growing Marijuana: outdoor, indoor, and mixed (see Table 1). While there is much debate about which Marijuana cultivation approach is better, there is generally agreement that there are likely more outdoor growers than indoors growers in our community due to startup cost. This is particularly true in the California Valley area where there has been a significant expansion of outdoor Marijuana cultivation since the spring of this year. Given these regionally significant impacts, some jurisdictions have considered banning or limiting specific growing approaches (e.g. no indoor, no outdoor, only in greenhouses, or only in existing greenhouses). Additionally, jurisdictions have considered bans or limits on mixed grow approaches to simplify regulations and enforcement. At this point in time, staff recommends that any proposed County ordinance should not include additional limitations based solely on growing approach (e.g. indoor or outdoor, or natural or artificial lighting). Instead, other restrictions or limitations could be paired with growing approaches to address local concerns.

Beyond allowed land uses and those approaches previously noted, other manners in which Marijuana cultivation can be limited include restricting the number of cultivation operations in a County planning region, concentrating the majority of cultivation in smaller regions of the County, limiting cultivation to a specific percentage of a parcel/site, and banning or limiting cultivation in areas of the County where there are existing water moratoriums or where additional uses are reliant on water offsets. Like limitations based on growing approach, staff does not recommend that any proposed County ordinance include additional limitations based solely on these criteria.

Personal Cultivation and Caregiver (Primary Caregiver) Cultivation License Exemptions

Provision 11362.77(a) of SB 420, Medical Marijuana, provides definitions for allowed cultivation amounts (6 mature or 12 immature) of Marijuana plants per qualified patient. California Health and Safety Code (HSC 11362.777(g)) limits the square footage of cultivation to 100 square feet per qualified patient.

Additionally, California Health and Safety Code (HSC 11362.775) and the California Attorney General's Guidelines allow for patient collectives and cooperatives. However, the MMRSA will sunset these provisions. Once the sunset period concludes, all Marijuana collectives and cooperatives will be required to be licensed, except for personal and caregiver cultivators. Post sunset, caregiver cultivators may cultivate Marijuana for no more than 5 patients. Staff recommends that any proposed County ordinance allow personal cultivators to continue operation, without being licensed (permitted) by the County. To eliminate potential confusion about the need for a license (permit) and to establish their personal cultivation exemption, staff also recommends that personal cultivators be encouraged to register their cultivation and obtain zip ties (or other unique identifiers) to identify Marijuana plants being grown under this license exemption. Staff recommends that caregivers be required to license their operations, but that their license not be included in any overall license count restrictions and that caregivers be treated the same as personal use cultivators with regards to setback distances.

Table 2 – Summary of Recommendations for Cultivation License Types

License Type	Category / Name	Recommended Action	License Required
N/A	Personal Use	Allow	No – Registration Recommended
N/A	Caregiver	Allow	Yes – Not included in license counts
Type 1	Specialty – Outdoor	Allow	Yes
Type 1a	Specialty – Indoor	Allow	Yes
Type 1b	Specialty – Mixed	Allow	Yes
Type 2	Small – Outdoor	Allow	Yes
Type 2a	Small – Indoor	Allow	Yes
Type 2b	Small – Mixed	Allow	Yes
Type 3	Medium – Outdoor	Limit	Yes
Type 3a	Medium – Indoor	Limit	Yes
Type 3b	Medium – Mixed	Limit	Yes
Type 4	Nursery	Allow	Yes
Type 5*	Large – Outdoor	Ban	N/A
Type 5a*	Large – Indoor	Ban	N/A
Type 5b*	Large – Mixed	Ban	N/A

*AUMA License Type

Cultivation Measurement

There is an on-going debate about whether plant count or plot size is a better measurement mechanism for regulating Marijuana cultivation. After careful review of the existing legislation, staff recommends generally following MMRSA and California Health and Safety Code direction regarding plant counts and plot size. This would allow the lesser of 6 mature or 12 immature plants or 100 square feet for personal cultivation; the lesser of up to five times those amounts for caregiver cultivation; and adherence to plant counts and square footage requirements for those holding specialty (type 1, 1a, 1b) licenses. All other licensed cultivations would be solely measured by plot size (cultivation area).

Staff recommends that cultivation area be defined as the aggregate of the area(s) of Marijuana cultivation, as measured around the perimeter of each discrete area of Marijuana cultivation on the site. Each discrete area of Marijuana cultivation should be defined as the physical space where Marijuana is grown and would include, but not be limited to, garden beds or plots, the exterior dimensions of hoop houses or green houses, and the total area of each of the cups, flats, pots, bags, or garden beds containing Marijuana plants on the site. Where cultivation is performed at multiple levels, such as when flats are grown in vertical racks or if cultivation were performed in a multistory structure, each level should be used as a separate discrete area. Where clearly delineated, measurement would be taken from the maximum anticipated extent of all vegetative growth of Marijuana plants to be grown on the site. Where not clearly delineated, canopy size should be used for measurement.

Vertical Integration

MMRSA (AB 266) contains complicated restrictions to prevent vertical integration of Marijuana businesses. These restrictions generally provide that licensees can only hold licenses (permits) in up to two separate categories. For example, specialty (type 1) and small (type 2) cultivation licensees may also obtain manufacturing (type 6 or 7) licenses or dispensary (type 10A) licenses. Whereas medium (type 3) and nursery (type 4) cultivation licensees cannot apply for dispensary (type 10a) licenses. However, dispensary (type 10a) licensees can apply for both manufacturing and cultivation licenses, depending on the total canopy size of area they intend to cultivate. To further complicate restrictions around vertical integration, AB 266 includes languages identifying January 1, 2026 as the date that vertical integration sections of the bill are repealed (AB 266, section 19328(d)). Staff recommends that no additional vertical integration restrictions be included in a County ordinance.

Licensees per Site

As noted, MMRSA contains specific restrictions regarding vertical integration by a single licensee. However, no restrictions are included that prohibit multiple licensees on a single parcel or site. After reviewing the vertical integration restrictions and considering input from the local community, staff recommends that any proposed County ordinance include a limitation of a single licensee per site. Licensees could still hold multiple license types, as allowed under the MMRSA (see Vertical Integration).

Grandfathering

There has been a significant amount of discussion about the concept of “grandfathering” of existing or long-term Marijuana businesses. It is not the typical practice of the County to include grandfathering provisions in its zoning ordinances, particularly where the ordinances address new uses not otherwise allowed under the County’s current, permissive zoning scheme. Staff recommends following this standard practice and not including any provisions allowing for the grandfathering of existing Marijuana operations.

Property Setbacks

Local jurisdictions have taken different approaches to setbacks for licensed cultivation operations. Some jurisdictions have defined setbacks from parcel (site) property lines, while others have defined setbacks from the nearest structure or inhabitable structure on adjacent parcels. To ease enforcement and avoid infringing on a neighbor’s rights, staff recommends setbacks be defined from adjacent site property lines for all licensed Marijuana operations.

Cultivation Setback Distances

Along with general property setbacks, jurisdictions have set different distance setbacks for cultivation operations. Staff recommends generally following the setback distances put forth in Monterey and Santa Cruz County ordinances and include minimum setbacks for licensed cultivation operations of one thousand (1,000) feet from any pre-school, school, youth facility, public park or playground, or recreation area, and general setbacks for licensed cultivation operations of three hundred (300) feet from the nearest adjacent property line. Note that the setback distance (1,000 feet) identified above for setbacks from the adjacent property line for identified property uses such as schools, youth facilities, and parks are set to be consistent with existing County dispensary ordinance. Both Monterey and Santa Cruz counties use shorter distances. Additionally, staff recommends minimum setback requirements for outdoor personal use cultivation including front of property: fifty (50) feet or behind the main structure; sides: thirty (30) feet; and, rear: thirty (30) feet. Regardless of setback distances, staff recommends that any proposed County ordinance include language prohibiting visible cultivation from public thoroughfares.

Dispensaries

Staff recommends that existing ordinance amendments regarding Marijuana dispensaries remain separate and unchanged by any new Marijuana ordinance. Dispensaries would continue to be disallowed in the Coastal Zone.

Volatile Manufacturing

The production of Marijuana extracts involves complicated techniques and the use of solvents such as butane, carbon dioxide, and alcohol. In recent years, butane has been the most commonly used solvent. Marijuana extracts produced using butane-based methods are known as butane hash oil. Due to the potential safety risks involved in the production of hash oil and other extracts, coupled with other factors, the DPH has been directed to limit the number of volatile manufacturing (type 7) licenses issued at the State level. Staff recommends that any proposed County ordinance include either a complete ban on volatile manufacturing or that use permits be required for any volatile manufacturing and that it only be allowed on properties zoned for industrial uses. Should volatile manufacturing be permitted, staff recommends that volatile manufacturing not be permitted on the same site as any cultivation.

Security

As a general approach, security measures sufficient to restrict access to only those intended and to deter trespass and theft of Marijuana or Marijuana products should be provided for all Marijuana related business and activities. Depending on the business, security measures could include preventing individuals from loitering in and around licensed facilities, limiting accessible areas to authorized personnel, storage of Marijuana and Marijuana products in a locked room or vault, installation of security cameras, and unarmed security personnel. Staff recommends that any proposed County ordinance follow the examples set by Monterey County with regard to security requirements in order to obtain a license, regardless of license type. Monterey County's requirements include maintaining flexibility in addressing appropriate security provisions and other requirements on a case-by-case basis rather than trying to apply a one-size-fits-all approach that may not be appropriate in every case. Monterey County also proposes to require a Security Plan as part of the application process that addresses site specific security conditions, which is consistent with the way the County's current dispensary ordinance handles security.

Signage

Based on conversations with officials from the State of Colorado where signage regarding Marijuana businesses has been controversial, staff recommends considering the example of Monterey County, which prohibits the display of Marijuana products or graphics depicting Marijuana (plants or leaves) on the exterior of the property. Such limitations on signage, however, will need to be reviewed for consistency with recent Supreme Court direction.

Pesticides and Fertilizers. Use and Storage

Staff recommends that any proposed County ordinance assure that all pesticides are used and stored in conformance with all applicable Federal and State laws and regulation. Staff also recommends that ordinance language ensure that fertilizers are properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

Violations of Ordinance and other General Statements

Monterey County Ordinance includes regulatory statements that state any violation of any condition of approval for a permit (license) to cultivate Marijuana is considered a public nuisance and may be grounds for revocation of the permit (license), fines, and civil or criminal prosecution. Staff recommends that this and other general statements provided in Monterey County Ordinances be included in any proposed County ordinance.

Table 3 below recaps the proposed ordinance amendments.

Table 3 – Summary of Proposed Ordinance Amendments for Marijuana

Land Use Designation	Specialty Crop
Maximum # of licensed marijuana cultivation permits allowed	100 (excludes personal and caregiver cultivations)
Licensees per site	One
Property setback measured from	Adjacent property line
Setbacks – Cultivation	1,000' from any pre-school, school, youth facility, public park or playground, or recreation area
Setbacks – Outdoor personal and caregiver Cultivation	Front: 50' or behind main structure Sides: 30' Rear: 30'
Grandfathering	No provision
Volatile Manufacturing	Ban or limit
Signage	Prohibited – Display of Marijuana products or graphics depicting Marijuana on the exterior of the property
Security	Security plan and measures required at time of license (individualized based on the business and activities)
Pesticides and Fertilizers	Stored in conformance with applicable Federal, State, and Local laws and regulations

Timelines and Costs

As was noted in the March 22, 2016 Board item, timelines and costs for the proposed ordinance are estimated as follows:

- Environmental Impact Report (EIR) – 12 to 15 months and \$150,000.
- Negative Declaration (ND) – 7 to 9 months and \$50,000.
- Exemption – 7 to 9 months and \$35,000.

These timelines and costs include consideration of all of the public consultation processes (i.e. AB 52 / SB 18 Native American Consultation, and so on), public comment review periods, and required hearing processes.

Local Tax Initiative

Several jurisdictions, including Monterey and Santa Cruz counties and the cities of Grover Beach, Santa Barbara, Salinas, Gonzales, King City, and Sacramento either have approved Marijuana tax measures or will be placing Marijuana tax measures on the ballot in November 2016. To enact a new tax, the tax measure must be approved by a majority of voters, if the tax would be used for general governmental purposes, or by two-thirds of the voters, if the tax would be used for specific purposes. The election would have to occur at a regularly-scheduled general election for members of the Board of Supervisors. The next such election is November 2016. In order for the County to place a measure on the November 2016 ballot, staff would have had to prepare a resolution and draft ordinance concurrently with this Board item so that noticing requirements could be met. After considering the numerous potential approaches to taxation of Marijuana and considering prior Board direction, staff believes it is better for your Board to consider Marijuana taxation in open session at a later date. This will provide sufficient time for staff to bring a more balanced and well-thought out approach to a potential Marijuana taxation measure. However, this delay will result in missing the November 2016 general election, making June 2018 the earliest date the County could bring a tax proposal to voters.

Two examples of taxation approaches can be found in the approaches taken by Santa Cruz and

Monterey counties. Santa Cruz County imposes a tax of no more than 10%, 7% when initially enacted, on gross receipts of Marijuana dispensaries in the unincorporated county. Santa Cruz is looking to add wholesalers to the mix of Marijuana businesses that will be taxed. Monterey County is proposing to use a mix of per square foot taxes and straight taxes. Under Monterey County's approach, commercial Marijuana cultivators will be taxed at a rate of \$15 per fiscal year per square foot of permitted canopy through June 30, 2020. The tax increases to \$25 per square foot by June 30, 2022 and continues to increase thereafter based on the Consumer Price Index. For nursery cultivation, Monterey County is proposing a tax rate of \$2 per square foot of permitted canopy through June 30, 2020. The nursery tax would increase to \$5 per square foot of authorized canopy through June 30, 2022 and increase thereafter based on Consumer Price Index. All other commercial Marijuana businesses including dispensaries, manufacturing, testing, transporting, distributing, and delivery will be taxed at a flat 5% of the gross receipts per fiscal year through June 30, 2020. The tax would increase thereafter by 2.5% percent per fiscal year, not to exceed a maximum tax rate of 10% per fiscal year on gross receipts.

OTHER AGENCY INVOLVEMENT/IMPACT

Departmental representatives from the Sheriff/Coroner, Planning and Building, Agricultural Commissioner, Human Resources, Auditor/Controller/Treasurer/Tax Collector/Public Administrator, County Counsel, and Administrative Office provided input and collaborated on the development of this report.

FINANCIAL CONSIDERATIONS

There are broad and explicit financial impacts due to the tax implications of the cultivation, manufacturing, transportation and delivery, and retail sale of Marijuana. These financial impacts could be significant for the County. Given the potential changes to MMRSA, the possibility of an Adult Use of Marijuana Act (AUMA) being approved by voters in November 2016, and the need for additional discussion on how cultivation, manufacturing, transportation, testing, delivery, and retail sale of Marijuana will be locally regulated, it is not feasible to quantify Marijuana specific financial impacts at this time.

RESULTS

Given the current and anticipated impacts of Marijuana on the community, discussion and direction to staff is consistent with the County goals of promoting a safe, healthy, livable, and well-governed community.

ATTACHMENTS

1. Medical Marijuana Regulation and Safety Act - AB 243
2. Medical Marijuana Regulation and Safety Act - AB 266
3. Medical Marijuana Regulation and Safety Act - SB 643
4. Monterey County Ordinances
5. Medical Marijuana Regulation and Safety Act to County Land Use Mapping
6. Adult Use of Marijuana Act (AUMA) Initiative